



**Office of the Attorney General**

**State of Texas**

**DAN MORALES**

ATTORNEY GENERAL

October 19, 1992

**Mr. Robert Eckels**

**Chairman**

**Committee on County Affairs**

**Texas House of Representatives**

**P. O. Box 2910**

**Austin, Texas 78768-2910**

**Letter Opinion No. 92-68**

**Re: Whether one individual may serve  
on both the Horizon City Town Council  
and the El Paso County Water Authority  
at the same time (ID# 16376)**

**Dear Mr. Eckels:**

**You ask us to address the following question:**

**[M]ay an individual serve on both the Horizon City Town  
Council and the El Paso County Water Authority at the same  
time[?]**

A member of the governing body of a city or town is a public officer, as is a director of the El Paso County Water Authority. *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm'n App. 1927, judgm't adopted); Acts 1961, 57th Leg., 1st C.S., ch. 32, § 3. The common-law doctrine of incompatibility prevents one person from holding two offices if the duties are inconsistent or in conflict, or if one would be subject to the supervision of the other. *Thomas*, 290 S.W. 152; Attorney General Opinion JM-203 (1984). You provide the following information about the duties of the two offices:

**[T]he town of Horizon City is wholly located within the  
boundaries of El Paso County Water Authority. The Authority  
provides water, sewer and residential trash collection to the  
town and is affected by town ordinances pertaining thereto as  
well as the use of rights of way and utility easements within the  
town limits. The Authority's customers within Horizon City  
limits are likewise subject to El Paso County Water Authority's  
rules and regulations.**

The court in *Thomas*, in determining that one person could not serve as city alderman and trustee of a school with schools located within the city limits, described the conflicting duties of the two offices as follows:

**[T]he offices of school trustee and alderman are incompatible;  
for under our system there are in the city council or board of**

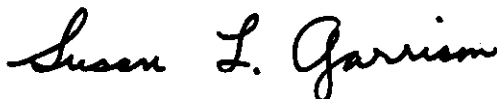
aldermen various directory or supervisory powers exercisable in respect to school property located within the city or town and in respect to the duties of school trustee performable within its limits--e.g., there might well arise a conflict of discretion or duty in respect to health, quarantine, sanitary, and fire prevention regulations. . . . [citations omitted]. If the same person could be a school trustee and a member of the city council or board of aldermen at the same time, school policies, in many important respects, would be subject to direction of the council or aldermen instead of to that of the trustees.

290 S.W. at 153. As you inform us, the El Paso County Water Authority is affected by Horizon City ordinances and uses rights of way and utility easements within the town limits. Conflicts over the ordinances applicable to the water authority or over the rights of way and easements might arise, so that one person could not give each jurisdiction his full loyalty. The duties of town councilman and director of the El Paso County Water Authority are in conflict. Accordingly, the common-law doctrine of incompatibility bars one person from serving in both offices.<sup>1</sup>

### S U M M A R Y

The common-law doctrine of incompatibility bars one person from serving as a member of the Horizon City Town Council and as a director of the El Paso County Water Authority concurrently.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee

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<sup>1</sup>Article XVI, section 40 of the Texas Constitution prohibits one person from holding "more than one civil office of emolument," subject to some expressly stated exceptions. Since we do not know whether compensation is an incident of either office you inquire about, we are unable to determine whether article XVI, section 40, bars one individual from serving as a member of the Horizon City Town Council and director of the El Paso County Water Authority concurrently.